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**AUG 17 2004**

In re Reissue Application No 10/734,073 :  
Filed: December 12, 2003 :  
Original Patent No. 6,327,497 B1 :  
Issue Date: December 4, 2001 :  
Patentee: Kirchgeorg et al. :  
Attorney Docket No.: 005471.00002 :

**OFFICE OF PETITIONS**

**ON PETITION**

This is a decision on the petition filed May 3, 2004, under 37 CFR 1.182 (see MPEP 1441) by a protestor, requesting that the normal two month period for filing a protest after publication of a reissue application in the Official Gazette be excused.,

The petition is dismissed as immaterial.

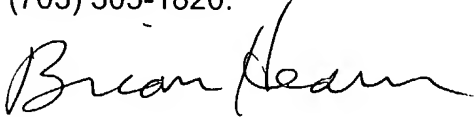
The above-captioned reissue application was published in the Official Gazette of March 9, 2004, such that a protest to be considered timely was presumably to have been filed by May 9, 2004. Petitioner (Xycarb Ceramics) is in litigation with patentee, and asserts that he only recently became aware of this reissue application, and at the time the petition was filed was contemplating the filing of both a protest herein and a request for reexamination. Inspection of the record reveals that a protest was filed herein by facsimile transmission on May 10, 2004, but one day past the supposed time limit for filing a protest. That same inspection further reveals that the examiner has not yet acted on the reissue application.

As indicated in MPEP 1441.01, where, as here, the two month period has expired before the protest is filed, but, also as here, the reissue application is not, at the time the protest is filed, then under a final rejection or prosecution has otherwise been closed, a petition under 37 CFR 1.182 is not required to have the protest considered. Indeed, a protest will be considered by the examiner without the need for a petition under 37 CFR 1.182 up to close of prosecution. See MPEP 1444.01.

This reissue application is being referred to the Technology Center for any appropriate action in due course

On a one time basis, counsel for protestor who filed the petition is being provided a courtesy copy of this decision. The USPTO will not further correspond with protestor in this matter.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-1820.

A handwritten signature in cursive script, appearing to read "Brian Hearn".

Brian Hearn  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

cc:

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